UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA	)	
v.	)	Crim. No. 93-00008
CLARENCE AARON	)	

MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION FOR RESENTENCING

A. Hugh Scott
Kathleen Burdette Shields
Heather L. Castillo
Michael Viano, Jr.
Choate, Hall & Stewart LLP
Two International Place
Boston, MA 02110
Tel: (617) 248-5000
Fax: (617) 248-4000
Attorneys for Defendant Clarence Aaron

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Defendant Clarence Aaron respectfully submits this memorandum in support of his Motion For Resentencing.

Background

In 1993, the defendant Clarence Aaron was convicted of conspiracy to possess with intent to distribute cocaine, and related possession and attempt offenses, in violation of 21 U.S.C. §§ 841(a)(1) and 846, and 18 U.S.C. § 2.

This was Mr. Aaron's first brush with the law. It was a non-violent drug offense, involving conduct by Mr. Aaron during his junior year in college when he was 23 years old. Several of his high school acquaintances operated a drug distribution ring in Mobile, Alabama, where they and Mr. Aaron had grown up. In mid 1992, the drug dealers approached Mr. Aaron about introducing them to a potential drug supplier in Baton Rouge, Louisiana, where Mr. Aaron was then in college. Mr. Aaron introduced them to the brother of one of his Baton Rouge friends, who was reputed to be a drug supplier. Thereafter, at their request, Mr. Aaron participated in an initial successful bulk drug transaction and a second attempted transaction that was foiled by a robbery. For his efforts, Mr. Aaron received a total of $1500. Mr. Aaron had no prior criminal record.

Pursuant to the then-mandatory United States Sentencing Guidelines (the "Guidelines"; individually a "Guideline"), Mr. Aaron was sentenced to serve three concurrent life sentences. For the last fourteen years, he has been in federal prison.

All of the other conspirators - including the kingpin who ran the drug distribution ring - have long since been released from prison, save one whose release date is 2014. The kingpin and other conspirators received leniency in exchange for their testimony against, among others, Mr. Aaron.

During his fourteen years of incarceration, Mr. Aaron has been a model prisoner. He has maintained a clear disciplinary record. He has consistently earned stellar job performance reviews for his work as a factory production clerk, the highest position available to inmates. He has continued his education, and he has participated in programs to assist other inmates. And, he has maintained his family connections as best he can, while enhancing his deep Christian faith.

Mr. Aaron was sentenced in 1993 under Guideline § 2D1.1(c)(1), which applied to possession with intent to distribute cocaine base, commonly known as "crack." Effective November 1, 2007, the United States Sentencing Commission (the "Commission") amended that Guideline. Effective March 3, 2008, the Commission made that amendment retroactive. Because he was sentenced under a Guideline that has been subsequently reduced retroactively, Mr. Aaron is entitled to be resentenced by the Court pursuant to 18 U.S.C. § 3582(c)(2). By his present motion, Mr. Aaron respectfully asks the Court to resentence him to a term of incarceration for less than life.

Argument

I. Pursuant to 18 U.S.C. § 3582(c)(2), Mr. Aaron Is Entitled To Be Resentenced.

Section 3582(c)(2) provides in pertinent part that

> . . . in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant . . . the court may reduce the term of imprisonment . . . .

18 U.S.C. § 3582(c)(2).[1]

When Clarence Aaron was initially sentenced by the Court in 1993 and then resentenced by the Court following his appeal in 1996, the Guideline applied to determine his Base Offense Level was the Guideline for crack cocaine offenses, USSG §2D1.1(c)(1). *See* Appendix In Support Of Motion For Resentencing, Ex. 12 (Report Of Reasons For Imposing Sentence, dated December 10, 1993), ¶ 1; Ex. 14 (U.S. Probation Guidelines Recomputation Memorandum, dated June 11,

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[1] The full text of 18 U.S.C. §3582(c)(2) states:

> **(c) Modification of an imposed term of imprisonment.** - The court may not modify a term of imprisonment once it has been imposed except that -
>
> . . .
>
> (2) in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

1996); Ex. 15 (Amended Judgment In A Criminal Case, dated July 30, 1996), p. 6.[2]

On November 1, 2007, the Sentencing Commission amended the crack cocaine Guidelines, including Guideline §2D1.1(c)(1). *See* USSG Appendix C, Amendment 706. Effective March 3, 2008, the Commission made this amendment retroactive for purposes of motions for resentencing under 18 U.S.C. § 3582(c)(2). *See id.*, Amendments 712 and 713.

Because Mr. Aaron was sentenced under a Guideline that has subsequently been retroactively amended, he is entitled to be resentenced. *See* 18 U.S.C. § 3582(c)(2); *see also* Ex. 31 (U.S. Department of Justice Memorandum dated December 11, 2007; from Kenneth E. Melson, Director, Executive Office for United States Attorneys; titled "Retroactive Application of Sentencing Guidelines Reduction for Crack Cocaine Offenses"; stating that "The retroactivity decision will allow prisoners convicted on crack cocaine charges to file motions under Title 18, United States Code, Section 3582(c) for reductions in their sentences").

The fact that the November 2007 amendment to the crack cocaine Guidelines does not, standing alone, result in the computation of a lower

[2] The Exhibits in the Appendix In Support Of Defendant's Motion For Resentencing will be referred to as "Ex. __."

Guidelines range for Mr. Aaron[3] does not affect his entitlement to resentencing under § 3582(c)(2). The plain text of the statute provides for resentencing where (1) the defendant's sentence is based on a Guidelines range and (2) that range is subsequently lowered. *See* 18 U.S.C. § 3582(c)(2). The statutory inquiry is objectively directed towards the applicable Guideline -- not subjectively directed towards the actual effect on an individual defendant of the amendment of the Guideline. The only relevant inquiries under the statute are: (1) Was the defendant sentenced under a particular Guideline? (2) If so, was the severity of that Guideline subsequently reduced? In Mr. Aaron's case, the answer to both questions is "Yes": he was sentenced under USSG §2D1.1(c)(1), and the November 2007 amendment has made that Guideline less harsh. The fact that the revised Guideline does not result in a lower Guideline sentence for Mr. Aaron does not matter, because the plain text of the statute does *not* expressly require that reduction in the range of a Guideline necessarily result in a reduced Guidelines computation for a particular defendant.

Stated otherwise, if Congress had intended that a particular defendant's Guideline computation be reduced before that defendant was eligible for resentencing under §3582(c)(2), Congress would have provided a third

[3] Mr. Aaron's Total Offense Level of 43 was based in part on the Base Offense Level of 38 in Guideline §2D1.1(c)(1). The November 2007 amendment increased the threshhold for the application of this Guideline from 1.5 kilograms to 4.5 kilograms. The revision did not affect Mr. Aaron's Guideline computation, because his conviction involved more than 4.5 kilograms.

requirement in the statute: namely, Congress would not only have required (1) that a defendant be sentenced under a Guideline range and (2) that the range be subsequently reduced, but Congress would also have required (3) that the reduction in the Guideline range also result in the lowering of a particular defendant's Guideline computation. Congress did not provide that third requirement. As Congress wrote §3582(c)(2), the entire focus of the statute is on the Guideline itself, and not on the actual impact of the Guideline on a particular defendant.

If Congress had wanted to restrict eligibility for resentencing under § 3582(c)(2) to defendants whose individual Guidelines computations were actually reduced by a retroactive amendment to a Guideline, Congress could have done so by explicitly so stating in the text of the statute. Congress did not do so, and it is up to the courts to interpret and apply the statute as it was enacted by Congress. If the courts were to require a defendant to show that the retroactive revision of a Guideline resulted in a reduction of his particular Guideline computation in order to obtain resentencing under §3582(c)(2), the courts would be imposing a requirement not found in the statutory text, and thus re-writing the statute in a manner unfavorable to the defendant. Criminal statutes must be strictly applied as written. *See United States v. Lanier*, 520 U.S. 259, 266 (1997) (endorsing a canon of strict construction of criminal statutes in applying the rule of lenity).

Under the well-established "rule of lenity," when any question arises about how a criminal statute should be applied, it must be applied in the manner most favorable to the accused. *Staples v. United States*, 511 U.S. 600, 611 n.17 (1994) (internal citations omitted); *see also Bifulco v. United States*, 447 U.S. 381, 387 (1980) (the rule of lenity "applies not only to interpretations of the substantive ambit of criminal prohibitions, but also to the penalties they impose"). Thus, where Congress has not explicitly said that a retroactive reduction in a Guideline must result in a reduction of a particular defendant's Guideline range, the courts should not read such a requirement into the statute. Mr. Aaron was sentenced under the crack cocaine Guideline, USSG §2D1.1(c)(1), and the impact of that Guideline has subsequently been reduced (by increasing the threshold for its application). That is all that the plain text of § 3582(c)(2) requires to entitle Mr. Aaron to resentencing. It is irrelevant that the revised and reduced Guideline did not actually lower Mr. Aaron's Guidelines computation.[4]

II. Pursuant To The *Booker* Case, The Guidelines Will Be Merely Advisory At Mr. Aaron's Resentencing, And The Court Should Conduct A Plenary Resentencing Hearing At Which The Court Examines All Of The Factors Relevant Under 18 U.S.C. § 3553(a).

[4] The defendant is aware of this Court's Order dated March 11, 2008 in *United States v. Dickerson*, Crim. No. 96-00055 (S.D. Ala.), which did not discuss the statutory construction argument made above. The defendant respectfully urges, in light of this statutory construction argument, that the *Dickerson* Order ought not to be followed in this case.

In *United States v. Booker*, 543 U.S. 220, 245 (2005), the United States Supreme Court held that a mandatory Sentencing Guidelines regime which dictates what sentence a trial judge must impose is unconstitutional. Now, after *Booker*, the Sentencing Guidelines are merely advisory to the sentencing judge. *Booker* applies to resentencing proceedings under 18 U.S.C. § 3582(c)(2). *See United States v. Hicks*, 472 F.3d 1167, 1169-70 (9th Cir. 2007) ("we . . . hold that *Booker* applies to § 3582(c)(2) proceedings"; "*Booker* expressly rejected the idea that the Guidelines might be advisory in certain contexts but not in others" (citing 543 U.S. at 263)); *United States v. Forty Estremera*, 498 F. Supp. 2d. 468, 471-72 (D.P.R. 2007) (same). The Sentencing Guidelines themselves provide that the Guidelines are to be applied as they are in effect at the date sentence is imposed. *See* USSG §1B1.11(a).

To impose a post-*Booker* sentence, the Supreme Court has explained that:

> a district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range. . . . The Guidelines are not the only consideration, however. Accordingly, after giving both parties an opportunity to argue for whatever sentence they deem appropriate, the district judge should then consider all of the § 3553(a) factors to determine whether they support the sentence requested by a party. In so doing, he may not presume that the Guidelines range is reasonable. . . . He must make an individualized assessment based on the facts presented.

Gall v. United States, 128 S. Ct. 586, 596-97 (2007). The Court noted that no "extraordinary" circumstances are required to justify a sentence outside the Guidelines range. *Id.* at 595.

III. The Recalculated Guidelines Range For Mr. Aaron Does Not Require A Life Sentence.

The first step in resentencing Mr. Aaron is for the Court to recalculate the appropriate advisory Guideline range. *See Gall*, 128 S. Ct. at 596-97. The proper Guidelines calculation does not result in a Guidelines range that requires a life sentence for Mr. Aaron.

The Guidelines calculation for Mr. Aaron which was done in 1993 and used at his 1996 resentencing resulted in a Total Offense Level of 43, which required imposition of a life sentence. That calculation should be adjusted in two ways, either of which results in a Total Offense Level that does not require a life sentence: (1) no three-level upward adjustment for role as a "manager or supervisor" per USSC § 3B1.1(b) is warranted; and (2) Mr. Aaron should receive a two-level downward adjustment for acceptance of responsibility per USSG § 3E1.1(a). If either of these adjustments is made, Mr. Aaron's Total Offense Level will be less than 43, and the advisory Guideline will not suggest that a sentence of life imprisonment is the only appropriate sentence.

A. No Upward Adjustment For Role In The Offense Is Warranted.

Mr. Aaron should not be characterized as a "manager or supervisor" of the drug conspiracy in which he participated. The drug ring in Mobile long pre-existed Mr. Aaron's first involvement in about May 1992, when he was a student at Southern University in Baton Rouge and was approached by the Mobile drug dealers who needed supplies for their on-going operation. His role was to make an introduction to a potential source of bulk drugs in Baton Rouge and, subsequently, to attend two drug transactions (one successful, one not) at the behest of the Mobile people, because they didn't know the Baton Rouge contact (and thus presumably didn't trust him, and wanted to use Mr. Aaron as "insurance"). It is very significant that the Mobile conspirators personally attended each of the transactions to handle the money and receive the drugs. The fact that Mr. Aaron was a newcomer whom the Mobile kingpin and his colleagues apparently did not trust enough to handle the transactions on his own cuts strongly against any notion that Mr. Aaron was a "manager or supervisor" of the Mobile operation. Also, the fact that Mr. Aaron's compensation for his criminal conduct was a mere $1500 speaks volumes about whether he was a "manager or supervisor." He was not, and no upward adjustment of three levels per USSG § 3B1.1(b) should be made to his Guideline offense level.

B. A Downward Adjustment For Acceptance Of Responsibility Should Be Made.

Mr. Aaron should be given credit for his "acceptance of responsibility" for participation in the drug conspiracy. Mr. Aaron did not plead guilty, nor did he accept responsibility for his criminal conduct at his trial. However, following his conviction, Mr. Aaron has repeatedly and publicly acknowledged responsibility for his criminal acts.

In 1999, in a nationally-televised "Frontline" program that examined the use of co-conspirator testimony against defendants, Mr. Aaron during the course of a brief interview acknowledged "our conspiracy" and did not distance himself from his own criminal conduct. *See* Ex. 9 (Declaration of Michael Viano, Jr. at Tab A (Mr. Aaron stated, "When I got arrested, all the guys involved in our conspiracy was already cooperating.")). In sworn statements submitted to the U.S. Pardon Attorney in 2001 and again in 2007 in support of his Petition For Commutation, Mr. Aaron described in detail his participation in the criminal drug conspiracy, acknowledged his responsibility, and expressed his deep remorse for his conduct. Ex. 2 (Affidavit Of Clarence Aaron, dated October 23, 2001), ¶ 21-24; Ex. 3 (Affidavit Of Clarence Aaron, dated November 15, 2007), ¶ 2-4, 8. Similarly, in his declaration submitted in support of his present Motion For Resentencing, Mr. Aaron has unequivocally accepted responsibility for his criminal conduct:

> I acknowledge full responsibility for the role I played in these transactions [for which I was convicted]. I am ashamed that I had any involvement with cocaine. I was raised to uphold very high moral standards, and I fell far short of those standards. . . . I regret the weakness that led me to involvement in a drug deal. I also regret that I further compounded my mistake by not admitting to my participation in the conspiracy at trial. . . . At the time I was involved in the drug conspiracy, I did not think through the consequences of my actions, how I was helping destroy the same community that I loved and had worked so hard to improve. For the shame, humiliation and damage I bestowed upon my family, friends and community I feel terrible remorse.

Ex. 1 (Declaration Of Clarence Aaron), ¶ 25, 37; *see also id.*, ¶ 22-24, 38, 43.

Guideline § 3E1.1(a) provides for a two-level downward adjustment in offense level for "acceptance of responsibility" by a defendant. The Commentary to this section states that "[c]onviction by trial . . . does not automatically preclude a defendant from consideration for such a reduction," and indicates that such a downward adjustment may be made in extraordinary circumstances even where an upward adjustment under § 3C1.1 for obstruction may also be warranted. *See* § 3E1.1 Application Notes 2, 4. This is such an extraordinary case.

C. The Appropriate Guidelines Calculation Does Not Point Towards A Life Sentence For Mr. Aaron.

If Mr. Aaron's Guidelines calculation is corrected either to eliminate the three-level upward adjustment for role in the offense, or to include a two-level decrease for acceptance of responsibility, or both, his Total Offense Range drops

below 43, and then the Guidelines range applicable to Mr. Aaron does not suggest a life sentence as the sole sentencing option for him.

IV. The Factors Set Forth In § 3553(a) Indicate That Mr. Aaron Should Be Resentenced To A Term Of Imprisonment Substantially Less Than Life.

After recalculating the Guideline range, the Court should resentence Mr. Aaron by considering the sentences recommended by the parties in light of the factors set forth in 18 U.S.C. § 3553(a), based upon the Court's individualized assessment of the facts presented, with no presumption that the Guidelines range is reasonable. *See Gall*, 128 S. Ct. at 596-97. Such a process indicates that Mr. Aaron should be resentenced to a term of imprisonment substantially less then life.

The key factors for consideration by the Court under § 3553(a) include:

- the nature and circumstances of the offense and the history and characteristics of the defendant;
- the need for the sentence to satisfy the sentencing goals of just punishment, deterrence to criminal conduct, protection of the public from further crimes of the defendant, and rehabilitation of the defendant; and
- the need to avoid unwarranted sentence disparities among defendants.

See 18 U.S.C. § 3553(a)(1), (2) and (6). Each of these factors indicates that Mr. Aaron should be resentenced to a substantial term of incarceration but not to a life sentence.

A. The Nature And Circumstances Of The Offense And The History And Characteristics Of The Defendant

Although Mr. Aaron's crime was serious, it was a first-time, non-violent drug offense. Prior to his offense at age 23, Mr. Aaron had led an upstanding, decent life as a student-athlete who was successfully pulling himself out of the Mobile projects and onto the path towards life as a responsible citizen. In the fourteen years since his conviction, Mr. Aaron has led the life of a model prisoner. In these circumstances, a sentence of life in prison is totally unwarranted.

1. Mr. Aaron's Childhood In The R.V. Taylor Plaza Housing Project

Until he was ten years old, Mr. Aaron lived with his parents and two sisters in the R.V. Taylor Plaza public housing project in Mobile, Alabama. Ex. 1, ¶ 3-5. One newspaper described R.V. Taylor Plaza as an area "infamous for its violent crime." Ex. 32 (Chris Harry, "Tough Act to Follow," *Orlando Sentinel*, Sept. 15, 1998). Mr. Aaron's mother, Linda Aaron, worked as a domestic servant, cleaning and taking care of children, to support the family. Ex. 1, ¶ 3. His father, who did not live with the family full-time, was out of work for most of Mr. Aaron's childhood due to poor health. *Id.* While he was growing up, Mr. Aaron avoided crime and drugs and instead focused on school, attended church regularly, and participated in youth sports programs. *Id.*, ¶ 4.

Starting in elementary school, Mr. Aaron worked at part-time jobs in order to be less of a financial burden on his family. *Id.*, ¶ 10. For example, when his family could not afford to buy a Boy Scout uniform for him, he obtained a paper route so that he could purchase his own uniform. *Id.* He also mowed lawns in his neighborhood, and worked at a pizza parlor and fast food restaurants to acquire his own spending money and to contribute to his family's financial needs. *Id.*

2. Mr. Aaron's Relationship With His Grandfather

Mr. Aaron's grandfather, Clarence Martin, Sr., who was a civilian employee at Eglin Air Force Base, served as Mr. Aaron's primary role model throughout his childhood and adolescence. *Id.*, ¶ 6.

On Sundays after church, Mr. Martin would meet with all of his grandchildren to discuss the importance of going to school, attending college, and saving money. *Id.* In exchange for doing chores around the house, he would give each child a small weekly allowance, a portion of which Mr. Martin would take back, deposit in a savings account and return to the child near Christmastime to spend on presents. *Id.*, ¶ 6-7. Mr. Martin also impressed upon the children the vital importance of moral responsibility and getting an education. *Id.*, ¶ 7. Although Mr. Martin had only completed the third grade, he firmly believed in the power of education to better oneself, and he often told Mr. Aaron that it was his dream for his grandson to attend college. *Id.*

When Clarence Aaron was very young, his grandfather gave him the nickname "Snoop." *Id.*, ¶ 8. This was not a gang moniker; rather, it was a term of affection by his grandfather, which Mr. Aaron's family and friends picked up and have continued to use to the present. *Id.*

When Mr. Aaron was ten years old, his parents decided that Mr. Aaron should move in with his grandfather in Mobile's Toulminville section, a middle class area away from the projects. *Id.*, ¶ 5. Mr. Aaron's parents wanted him to attend the schools in Toulminville. which were better than those near the Taylor housing project, and wanted him to benefit from associating with the residents of Toulminville, who tended to be hard workers and responsible citizens who cared about their community. *Id.*

From Mr. Aaron's childhood through college, his grandfather was his role model and his primary source of financial support. *Id.*, ¶ 9. As Mr. Aaron grew older, he came to see his grandfather as his best friend; they had a very close and special bond. *Id.*

3. Mr. Aaron's Dedication To Religion And Community Service As A Mason

Mr. Aaron's family is deeply religious, and he attended church regularly with them throughout his childhood and adolescence. *Id.*, ¶ 11. As a teenager, he developed a close relationship with the pastors of his church and his conversations

with them increased his interest in Christianity and gave him a moral compass with which to gauge right and wrong. *Id.*

Mr. Aaron's grandfather was a member of the Masons, and it was his dream for Mr. Aaron to join the Masonic Order. *Id.*, ¶ 15. To honor his grandfather and serve the community, Mr. Aaron applied for membership in the Masonic Lodge of Whistler, a suburb of Mobile, in 1988. *Id.* After conducting a thorough character investigation that included interviews of members of Mr. Aaron's church, his teachers in school, and his neighbors, the Whistler Lodge accepted Mr. Aaron. *Id.* As a Mason, Mr. Aaron participated in numerous community service activities, including collecting toys for needy children at Christmas, cleaning up school playgrounds, and putting together and delivering food baskets for the needy. *Id.*, ¶ 16. Even after Mr. Aaron went to college out of state, he returned home to participate in Masonic activities. *Id.*; *see also* Ex. 11 (Declaration of Clarence D. Washington), ¶ 3. He made a special effort to participate in "church visitations," during which Lodge members would attend their fellow members' churches to worship with them. *See* Ex. 1, ¶ 16.

4. Mr. Aaron's Career As A Student-Athlete

Mr. Aaron was a solid student who was actively involved in sports programs throughout his childhood and young adult years. At Booker T. Washington Middle School in Mobile, Mr. Aaron was on the track team and never lost an 800 meter

race. *Id.*, ¶ 12. His middle school track teammates and coaches selected him to receive an award called the Spark Plug Award that recognized his outstanding contributions to the team. *Id.*

At Le Flore High School in Mobile, Mr. Aaron played varsity football for four years, ran track for four years, and played basketball for two years. *Id.*, ¶ 13. During his senior year, Mr. Aaron was the defensive captain of the football team, and his coaches and teammates voted him Most Valuable Player on the team. *Id.* He was named an All State cornerback and was a member of the All County football team for Mobile County. *Id.*

Mindful of his grandfather's emphasis on the importance of an education, Mr. Aaron was always focused on his school work and on keeping his grades up in high school. *Id.*, ¶ 14. His work paid off: when he was getting ready for college, his score on the ACT examination placed him in the 74th percentile nationwide. *Id.* He went on to win full athletic scholarships from Alabama State University, Alabama A & M University, University of Southern Mississippi, and Mississippi Valley State University. *Id.*, ¶ 13.

5. Mr. Aaron's Years At Southern University

Mr. Aaron initially planned to attend Mississippi Valley, but, before the school year began, decided instead to enroll at Southern University, a school with a stronger academic reputation and a better football program. *Id.*, ¶ 17. Although he

did not have a guaranteed place on the football team at Southern, he believed that Southern was the better choice because of the academic opportunities it offered. After rigorous workouts to prepare himself, Mr. Aaron earned a spot on Southern's Division I football team in the fall of 1989. *Id.*

During his summer breaks from college at Southern, Mr. Aaron took courses at Bishop State Junior College and worked at the Mobile docks loading and unloading cargo ships. *Id.*, ¶ 18. Each summer, he advanced a step in the longshoremen's hierarchy, starting as an unloader, advancing to lasher (securing loads on the ships), and finally achieving the rank of carpenter. *Id.* He saved part of the money he earned to cover school expenses and gave the rest to his mother to help out with household expenses. *Id.*

While Mr. Aaron was in college, his sister, Stephaine had a daughter, Soporia. *Id.*, ¶ 19. Stephaine was not married, and Mr. Aaron felt that he should step in and behave as a father figure to Soporia. *Id.* When home from school on breaks, Mr. Aaron would feed her, play with her, and often put her to bed. *Id.* Mr. Aaron treated Soporia like a daughter, and dreamed of one day having children of his own. *Id.* Mr. Aaron and Soporia remain close, but she has not been able to visit him in recent years due to his distance from Mobile. *Id.*

6. The Death Of Mr. Aaron's Grandfather

While Mr. Aaron was at Southern, his grandfather was diagnosed with terminal prostate cancer. *Id.*, ¶ 20. The news devastated Mr. Aaron. *Id.* During breaks from college, Mr. Aaron tried to minister to his grandfather's needs and drove him to and from the hospital for chemotherapy sessions. *Id.* Clarence Martin, Sr. died during Mr. Aaron's junior year, in December 1991. *Id.*

When his grandfather died, Mr. Aaron lost the one person who had consistently cared for him and given him moral support throughout his life. His grandfather had been Mr. Aaron's best friend and mentor, and had served as his moral compass. *Id.* After his grandfather's death, Mr. Aaron felt adrift and depressed. *Id.* His grandfather's death also left Mr. Aaron in a precarious financial situation, because his grandfather had been providing him with money for things at school, which his parents were unable to do. *Id.*, ¶ 21. Although his grandfather had left Mr. Aaron a bequest in his will, Mr. Aaron's aunts disputed this bequest, and, to keep peace in the family, Mr. Aaron gave up his claim to the bequest. *Id.* Mr. Aaron found himself in a situation of great financial stress. *Id.* Pastor George McNeil, who has counseled Mr. Aaron throughout his incarceration, describes how Mr. Aaron's grandfather's death profoundly affected his judgment: "When he got involved in the drug conspiracy, he was in a bad place. His grandfather had passed away, and he was facing financial difficulty. Faced with

these obstacles, Mr. Aaron, a young man, exercised poor judgment in an effort to avoid burdening his family with his financial needs." Ex. 7 (Declaration of George McNeil), ¶ 5.

7. Mr. Aaron's Participation In A Drug Conspiracy

In the spring of 1992, a few months after his grandfather's death, Robert Hines, a former high school football teammate, contacted Mr. Aaron about a potential drug transaction. Ex. 1, ¶ 22. After high school, Mr. Hines had begun dealing drugs for the head of a major Mobile drug distribution ring, Teano Watts. *Id.* Mr. Hines told Mr. Aaron that Mr. Watts was experiencing problems obtaining cocaine from his regular suppliers, and asked if Mr. Aaron knew any drug suppliers in Baton Rouge. *Id.* Mr. Aaron knew that one of his friends and college classmates, Ricky Chisholm, had a brother who had a reputation for being involved in cocaine dealing. *Id.* In a grave error of judgment, Mr. Aaron told Mr. Hines that Ricky Chisholm's brother, Gary Chisholm, might be able to provide Mr. Watts with cocaine. *Id.*

A few days later, Mr. Hines told Mr. Aaron that Teano Watts was willing to use Gary Chisholm as a supplier, but did not trust him because they had never met. *Id.*, ¶ 23. Mr. Watts wanted Mr. Hines and Mr. Aaron to be present at the transaction, with Mr. Aaron acting as an intermediary since he was acquainted with both parties. *Id.* Mr. Hines and Mr. Aaron met Mr. Watts in Mobile, where Mr.

Watts provided them with $200,000 to purchase 10 kilograms of cocaine. *Id.* Mr. Hines, Mr. Aaron, and one James Perry then drove to Baton Rouge to obtain the cocaine from Gary Chisholm. *Id.* He directed them to Houston where they bought 9 kilograms of cocaine from a supplier named Jairo Plaza. *Id.* Mr. Hines paid another person, Chris Wiley, to transport the money to Houston on a bus. *Id.* Messrs. Hines, Perry and Aaron then drove to Houston and completed the transaction with Mr. Plaza. *Id.* Chris Wiley brought the cocaine back to Mobile. *Id.* Mr. Aaron received $1,500 for his role in the transaction. *Id.*

A few weeks later, Mr. Aaron accompanied Messrs. Hines and Perry on another trip to Baton Rouge to obtain 15 kilograms of cocaine from Gary Chisholm, who again directed them to Houston. *Id.*, ¶ 24. This time, Mr. Chisholm wanted to be present at the transaction, so he flew to Houston and met them there. *Id.* In Houston, however, the planned transaction was thwarted by a robbery. *Id.* This was the end of Mr. Aaron's involvement in the drug distribution operation. *Id.*

About six months later, in early 1993, during his senior year in college, Mr. Aaron heard that there was a warrant for his arrest and immediately turned himself in at the local parish prison in Baton Rouge. *Id.*, ¶ 26. There was no warrant in Louisiana, however, and the parish prison sent him away. *Id.* On February 1, 1993, Mr. Aaron turned himself in at a police station in Mobile. *See*

Ex. 2, ¶ 25. At Mr. Aaron's arraignment, the magistrate judge released him on condition that he take, and pass, randomly administered drug tests. *See* Ex. 13 (*United States v. Aaron*, Cr. No. 93-00008, Order Setting Conditions of Release (S.D. Ala. Feb. 1, 1993)). Mr. Aaron passed each of these drug tests and remained free on bond until the day of his conviction, almost nine months later. *See* Ex. 2, ¶ 26.

In 1993, Mr. Aaron was convicted by a jury and sentenced to three concurrent life sentences, which was required by the then-mandatory Sentencing Guidelines. He has been incarcerated since then.

8. Mr. Aaron's Exemplary Conduct As An Inmate For Fourteen Years

During his fourteen years in prison, Clarence Aaron has established an exemplary record of conduct. Mr. Aaron has taken advantage of the opportunities available to him in prison to develop and mature as a person. As his recent declaration says,

> From the day I entered the prison door, I made a promise to myself that I would meet the trials of life head on, and I have become a stronger person behind these walls. I have reflected long and hard on the mistake I made. I have tried to take full advantage of self-improvement programs and have furthered my education. I have worked hard at my prison jobs and have been recognized for that. I have tried to maintain a spotless disciplinary record. My Unit Team has classified me as a model prisoner. To say I'm proud of that would be a understatement - not many inmates have that title. I am not the same person I was in 1992, and I am confident that I have the strength and understanding to make wise choices in my life.

Ex. 1, ¶ 39.

For the first twelve years of his incarceration, Mr. Aaron was an inmate at the United States Penitentiary in Atlanta ("USP Atlanta"). In a January 2001 progress report, his case manager summarized his time at that facility as follows:

> Inmate Aaron was designated to USP Atlanta in December 1993[.] [S]ince arriving Aaron has been an outstanding inmate. He has maintained seven years of clear institutional conduct. He has maintained a low profile, and is not considered to be a management concern. He has not been nor associated with any gang activity, drugs, nor group disturbances. Aaron has been a model inmate here at USP Atlanta.

Ex. 1, at Tab 3 (Federal Bureau of Prisons, Progress Report for Inmate Clarence Aaron, dated Jan. 2, 2001).

In 2005, two different wardens petitioned to have Mr. Aaron transferred to a lower security prison, both times stating that Mr. Aaron's "institutional adjustment has been outstanding" and noting that "he receives excellent work performance evaluations." *See id.*, at Tab 2 (Bureau of Prisons Requests for Transfer, dated July 08, 2005 and Dec. 12, 2005). The petitions also stated that his unit team believes he is an appropriate candidate to be housed in a less secure prison facility. *See id.* In June 2006, he was transferred to the United States Penitentiary in Coleman, Florida ("USP Coleman"), which has facilities in a range of security classifications. In both facilities, Mr. Aaron has been a model prisoner. He has maintained a blemish-free disciplinary record and has received consistently high

reviews and awards acknowledging his hard work and participation in the prison programs.

While at both USP Atlanta and USP Coleman, Mr. Aaron worked in the UNICOR prison factories and held positions of increasing responsibility. In 2004, Mr. Aaron's Progress Report described his time commitment in the factory as "7 hours a day, 5 days a week," and it also praised him as a "good worker." *Id.*, at Tab 4 (Federal Bureau of Prisons, Progress Report for Inmate Clarence Aaron, Feb. 23, 2004). His 2004 UNICOR Work Performance Evaluation commented that Mr. Aaron "is very dependable and knowledge[able] of his job assignments." *Id.*, at Tab 6 (UNICOR Work Performance Evaluation Records for Clarence Aaron). His last position at USP Atlanta was as a Production Clerk, which is a position involving office skills, and a "high level of proficiency and responsibility." *Id.*, at Tab 5 (Federal Bureau of Prisons, Progress Report for Inmate Clarence Aaron, June 20, 2007). At the UNICOR factory at USP Coleman, Mr. Aaron continued working as a Production Clerk, and was told that his "contributions are an asset to the factory." *Id.*, at Tab 6. Mr. Aaron was also told that he "continues to give great effort in making this a successful factory." *Id.* Mr. Aaron's Case Manager also reported that his UNICOR supervisors indicate that he "has a positive relationship with his co-workers... [and] that he makes fewer mistakes than most inmates at his level of training." *Id.*, at Tab 5. During his time

at both USP Atlanta and USP Coleman, Mr. Aaron's supervisors have consistently given him perfect scores in his work performance evaluations, ranking him as a five (out of a possible five points) in the areas of safety, quality assurance, personal conduct and hygiene, punctuality and productivity, and compliance with work standards. *See id.*, at Tab 6. In January 2001, Mr. Aaron's work supervisor recommended that he receive a "Lump Sum Award" for his work. In support of this recommendation, the supervisor wrote:

> Inmate Aaron['s] job consist[s] of [a] clerical assignment, . . . which he does at a very high level of efficiency. In addition[] to his regular duties, Inmate Aaron['s] knowledge of Millennium "SAP" enable[s] him to assist our factory staffs as well as other factories['] staffs with regard to questions and concerns [related] to the[ir] factory operations. His ability and steady performance ha[ve] been a great asset to [the factory]. Inmate Aaron is an outstanding worker, keeping up with a grade one pace in his department. He's always willing to do extra duties without being asked and is helpful with the training of new inmates . . . . Finally, it should be noted that inmate Aaron has an outstanding attitude, takes pride in his work, and is very knowledgeable of the overall operation of his department.

Id., at Tab 7 (J. Keenan, Memorandum re: Lump Sum Award for Inmate Aaron, Jen. 29, 2001). Similarly, in a 1997 recommendation that Clarence receive "premium pay," his work supervisor noted that Clarence's "job performance and work ethic[] have been outstanding. Inmate Aaron is a conscientious worker who

unselfishly sheds his Clerk's status . . . [to] work on other details. . . . He is courteous to all staff and is highly respected by his inmate peers."[5]

Over the last fourteen years, Mr. Aaron has also been involved in a range of volunteer and faith-based activities at both USP Atlanta and USP Coleman. While at USP Atlanta, Mr. Aaron was a photographer for the Recreation Department, and was awarded several Certificates of Achievement which noted that his "professional manner and diligent efforts made the Photo Program the most participated program [sic] in the Recreation Department" and that he had been "a vital asset to the USP Atlanta Recreation Department." *Id.*, at Tab 8 (Certificates of Achievement, June 30, 2003 and June 1, 2004). In September of 2004, Chaplain T. J. Saulsberry presented Mr. Aaron with a Certificate of Appreciation, thanking him for his "inspirational message given on the fruit of kindness during the Fruit of the Spirit Celebration." *Id.*, (Certificate of Appreciation, Sept. 12, 2004). Since his transfer to USP Coleman, Mr. Aaron has continued to be involved in the spiritual community of the prison. Recently, Mr. Aaron completed a correspondence Bible course from Emory University, and has served as the Chapel sound technician. *Id.*, at Tab 5. Mr. Aaron has also completed at least two other educational programs run by the prison's adult continuing education program,

[5] *Id.*, at Tab 7 (J. Bailey, Premium Pay Application on behalf of Clarence Aaron, Oct. 1, 1997); *id.*, at Tab 3 ("Aaron's foreman stated, 'Aaron is one of my best workers, I need fifty more guys like him. He doesn't cause any trouble; he comes in and does his job with minimal supervision.'").

including a class in behavioral development. *Id.*; *see also id.*, at Tab 8 (Certificate of Achievement, February 14, 2007).

In his recent Progress Report, dated June 2007, Mr. Aaron's case manager summarized his recent time at the facility:

> Mr. Aaron has demonstrated outstanding institutional adjustment. He has good rapport with staff and other inmates. He is not a management problem.

Id., at Tab 5. The Progress Report also praised Mr. Aaron for making "outstanding progress" towards his goals and noted that he had "maintained a clear [disciplinary] conduct throughout his incarceration." *Id.* The Progress Report also stated that Mr. Aaron has no mental or emotional disorder that would preclude him from gainful employment if he were released, and that if released, he would be considered for a Community Corrections Center placement to assist in his transition to the community. *Id.*

9. The Nature And Circumstances Of The Offense And The History And Characteristics Of Mr. Aaron Militate Against Imposing A Life Sentence On Him.

The first of the factors to be considered by the Court in determining an appropriate sentence under Section 3553(a) is "the nature and circumstances of the offense and the history and characteristics of the defendant." 18 U.S.C. § 3553(a)(1). Mr. Aaron's life history and the facts about his criminal offense indicate that his criminal conduct was an aberrational episode in what was before

the offense, and has been since the offense, an upstanding life. Mr. Aaron had, with the guidance and support of his beloved grandfather, pulled himself out of the Mobile projects and set himself on a course to complete his college education and become a productive and successful member of society. With the loss of his grandfather, Mr. Aaron's life was rudderless and adrift, and he made what he now readily concedes to have been a foolish choice to become involved in a serious crime. Having done that, his first action when he later heard that the authorities wanted him was to turn himself in. His "clean" drug tests from the very start with Pre-Trial Services demonstrate that he was not himself into the "drug culture." His exemplary record as an inmate these past fourteen years is consistent with the exemplary life he led before those few weeks in mid-1992 when he was involved with the drug conspiracy. The facts and circumstances of Mr. Aaron's life and crime strongly indicate that this is not a situation in which a life sentence is warranted.

B. The Need To Avoid Unwarranted Sentence Disparities Among Defendants

Section 3553(a) indicates that one of the factors to be considered by a Court in fashioning an appropriate sentence is "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. § 3553(a)(6). Here, there is plainly a vast, unwarranted disparity in the sentences of the co-conspirators. The kingpin of the

drug distribution operation served less than eight years and was released eight years ago. His henchmen other than Mr. Aaron all served less time than the kingpin. On the other hand, Mr. Aaron -- who received $1500 for assisting the kingpin twice over the course of a couple of weeks -- was sentenced to three concurrent life sentences.

As the following discussion shows, Mr. Aaron's criminal record -- including his participation in the conspiracy -- pales in comparison to the records of those who testified against him, while he alone among them showed promise to be a contributing member of society. Yet Mr. Aaron continues to serve his life sentence, *while all those who testified against him are now out of jail.*

1. Marion Teano Watts

Marion Teano Watts was a drug kingpin. At Mr. Aaron's trial, when Mr. Watts was asked what he did for a living, he responded: "Well, I was a major crack cocaine distributor in the Mobile area. I was buying kilograms of cocaine and I was fronting them to people who worked for me." *See* Ex. 16 (*United States v. Chisholm and Aaron*, CR-93-0008, Trial Transcript Excerpts), at 39. Mr. Watts admitted having made "over a million dollars" selling crack. *See id.*, at 52. He had at least six people working for him in his drug operation.[6]

[6] *See id.* at 46; *see also id.* at 40 ("I have about six people working for me. I would give them a kilogram or two kilograms of crack cocaine and they would sell the crack cocaine on the street and in return bring me the money that I asked for.").

The grand jury indicted Mr. Watts on two counts of conspiracy to possess with intent to distribute a total of 70 kilograms of cocaine and cocaine base. *See* Ex. 17 (*United States v. Watts,* Cr. No. 92-00133, Indictment (S.D. Ala. June 26, 1992)). If convicted on those counts, Mr. Watts faced a sentence of life in prison without the possibility of parole. *See* Ex. 16, at 57. Nonetheless, Mr. Watts' actual sentence, at least initially, was only 14 years in prison. *See* Ex. 18 (*United States v. Watts*, Cr. No. 92-00133, Judgment in a Criminal Case (S.D. Ala. Oct. 21, 1993)). The court later reduced that sentence to nine years, and Mr. Watts actually served only seven years and ten months in prison. *See* Ex. 26 (Federal Bureau of Prisons, Inmate Data Report for Marion Teano Watts, May 15, 2008). Since early 2000, he has been free. *Id.*

2. Robert Hines

Robert Hines testified that he was actively involved in buying, selling, and using cocaine from 1988 until his arrest on drug conspiracy charges in 1992. Ex. 16, at 180. During the same period, he was convicted of receiving stolen property. *Id.*, at 88. After his drug arrest in 1992, the court initially released him on bond. The court revoked that bond when Mr. Hines failed a drug test. *Id.*, at 88-89.

As discussed above, in addition to his five years of drug activity and other criminal activity, Mr. Hines was directly responsible for involving Mr. Aaron in the transactions that led to his arrest and conviction. Mr. Hines' initial sentence,

however, was only ten years in prison.[7] The court later reduced that sentence to five years, and Mr. Hines actually served only four years and four months in prison. *See* Ex. 27 (Federal Bureau of Prisons, Inmate Data Report for Robert Hines, April 17, 2008).

3. Ron Smith

Ron Smith testified that he sold drugs for Mr. Watts from 1989 until Mr. Watts was arrested in 1992. Ex. 16, at 340-42. He was convicted of conspiracy to possess with intent to distribute four kilograms of cocaine and crack cocaine. *Id.*, at 343. He had been convicted previously on another felony cocaine charge. *Id.*, at 318-19, 332. Mr. Smith's initial sentence on the conspiracy charge, however, was only 100 months in prison. The court later reduced that sentence to five years, and Mr. Smith actually served only four years and five months in prison. *See* Ex. 28 (Federal Bureau of Prisons, Inmate Data Report for Ron Smith, April 17, 2008). Mr. Smith later violated the conditions of his supervised release and was sentenced to an additional two years in prison. *See* Ex. 20 (*United States v. Smith*, Cr. No. 92-00133, Docket (S.D. Ala.) (noting entry of Probation Revocation Judgment on October 5, 1998)).

[7] *See* Ex. 19 (*United States v. Hines*, Cr. No. 92-00133, Amended Judgment in a Criminal Case (S.D. Ala. Aug. 21, 1996)); *see also* Ex. 27 (Federal Bureau of Prisons, Inmate Data Report for Robert Hines, May 15, 2008).

4. Chris Wiley

Chris Wiley testified that, prior to his involvement in Mr. Watts' conspiracy, he sold cocaine "every day" in Kansas City. Ex. 16, at 241. He then moved to Louisiana and continued his drug activities. *Id.*, at 242. Like Mr. Aaron, Mr. Wiley was indicted for conspiracy to possess with intent to distribute 23 kilograms of cocaine and cocaine base. *See* Ex. 21 (*United States v. Plaza, et al.*, Cr. No. 93-00008, Indictment (S.D. Ala. Jan. 21, 1993)). Notwithstanding this charge and Mr. Wiley's history of drug dealing, the court sentenced him to only two years and eight months in prison. *See* Ex. 29 (Federal Bureau of Prisons, Inmate Data Report for Chris Wiley, May 15, 2008). He has been out of prison since 1995. *Id.*

5. James Perry

James Perry joined with Mr. Hines and Mr. Aaron on the first of their trips to Houston to buy cocaine for Mr. Watts. Ex. 16, at 395. He was paid $1,000 for his services, $500 less than Mr. Aaron received. *Id.*, at 402. The government, however, never charged Mr. Perry with any crime and he served no time in prison as a result of his involvement in Mr. Watts' conspiracy.

6. Gary Chisholm

The jury convicted both Gary Chisholm and Mr. Aaron on the same charges. *Id.*, at 602. Even before his involvement with Mr. Watts' conspiracy, Mr. Chisholm had engaged in large-scale drug trafficking. *Id.*, at 360-62. In fact,

on the same day the court issued an arrest warrant for him on the charges in Mobile, a grand jury in the Western District of Louisiana indicted Mr. Chisholm on separate conspiracy charges involving 15 kilograms of cocaine. *See* Ex. 22 (*United States v. Lugo-Cuero, et al.*, Cr. No. 92-20002-04, Indictment (W.D. La. Jan. 20, 1993)).[8]

Mr. Chisholm also had a demonstrated propensity for violence: while testifying against Mr. Chisholm, Mr. Hines reported to the court that Mr. Chisholm had told him:

> That he was going to skin my sister, they were going to have somebody skin my sister and . . . that when I go to the penitentiary that he was going to have somebody to do something bad to me up there.

Ex. 16, at 182. The district court originally sentenced Mr. Chisholm to life in prison, but, after an appeal, the court reduced his sentence to 24 years and four months. *See* Ex. 25 (*United States v. Chisholm*, Cr. No. 93-00008, Amended Judgment in a Criminal Case (S.D. Ala. June 13, 1996)); *see also* Ex. 30 (Federal Bureau of Prisons, Inmate Data Report for Elwyn Jerome Chisholm, April 17, 2008).

[8] Mr. Chisholm later pled guilty to one count of possession with intent to distribute three kilograms of cocaine. *See* Ex. 23 (*United States v. Chisholm*, Case No. 93-20002-04, Waiver of Indictment (W.D. La. June 30, 1994)). The court in Louisiana sentenced him to ten years in prison, to run concurrently with the sentence he received in the Mobile case. *See* Ex. 24 (*United States v. Chisholm*, Cr. No. 93-20002-04, Judgment in a Criminal Case (W.D. La. Sept. 22, 1994)).

7. Mr. Aaron's Sentence Is Disproportionately Long.

The following chart summarizes the sentences and time served by Clarence Aaron and his co-conspirators.

	Original Sentence	Reduced Sentence	Date of Release	Actual Time Served
Marion Teano Watts	14 yrs.	9 yrs.	4/28/2000	7 yrs. 10 mos.
Robert Hines	10 yrs.	5 yrs.	9/19/1997	4 yrs. 4 mos.
Ron Smith	8 yrs. 4 mos.	5 yrs.	3/28/1997	4 yrs. 5 mos.
Chris Wiley	2 yrs. 11 mos.	None	9/6/1995	2 yrs. 8 mos.
James Perry	None	N/A	N/A	0
Gary Chisholm	Life	24 yrs. 4 mos.	4/25/2014 (projected)	15 yrs. 4 mos. (as of 5/21/08)
Clarence Aaron	Life	None	None	14 yrs. 8 mos. (as of 5/21/08)

The average time served (including time to be served) of Mr. Aaron's co-conspirators, including Gary Chisholm, is eight years and one month. The average actual time served of the co-conspirators who testified against Mr. Aaron is less than five years.

Clarence Aaron made two terrible mistakes, first by associating with known drug dealers and assisting them with a large drug transaction, and then by failing to

admit his criminal behavior at trial. He recognizes those mistakes and will always regret them. *See* Ex. 1, ¶ 25. Those mistakes, however, do not justify his receiving a sentence of life behind bars, when more culpable members of the conspiracy received relatively short prison terms. He was not the principal force behind the conspiracy. He did not commit a crime of violence. He did not have a record of drug use or other criminal activity. Unlike any of his co-conspirators, Mr. Aaron was a full-time college student. When not in school, he had held jobs throughout his adolescent and adult life. No justification exists for the kingpin and other conspirators walking free after a few years while Mr. Aaron will die in prison.

C. The Need To Satisfy Sentencing Goals

Ultimately, § 3553(a) directs that a criminal sentence should not be greater than necessary to satisfy the sentencing goals of (1) just punishment, reflecting the seriousness of the offense and promoting respect for the law, (2) deterrence to criminal conduct, (3) protection of the public from further crimes of the defendant, and (4) rehabilitation of the defendant. *See* 18 U.S.C. § 3553(a)(2). In Clarence Aaron's case, a life sentence far exceeds the sentence needed to meet these sentencing goals.

1. Just Punishment And Deterrence Will Be Satisfied By A Sentence Substantially Shorter Than Life.

Diverse voices -- including the Supreme Court, the Sentencing Commission, and a juror in this very case -- suggest that the sentencing goals of "just

punishment" and "deterrence" do not require that Mr. Aaron spend his life in prison.

Mr. Aaron's life sentence was required by the then-mandatory "crack" Guideline in effect when he was sentenced in the 1990s. Additional research and experience since then have caused the Sentencing Commission to conclude that the "crack" Guidelines, which treated one unit of "crack" as harshly for sentencing purposes as 100 units of cocaine, were unnecessarily harsh and failed to meet the sentencing objectives outlined by Congress. *See Kimbrough v. United States*, 128 S. Ct. 558, 568 (2007) (citing United States Sentencing Commission, *Report to Congress: Cocaine and Federal Sentencing Policy* (May 2007)). Thus, the Supreme Court noted that a district court could conclude in sentencing a particular defendant that the "crack" Guidelines resulted in a sentence "greater than necessary" to achieve the purposes of Section 3553(a). *See* 128 S. Ct. at 575. That is true in the present case, where the "crack" Guideline results in a life sentence for a first-time, non-violent offender who received $1500 for his criminal conduct. If, consonant with the Supreme Court's comment in *Kimbrough*, this Court were to do nothing more than use the Guideline for cocaine in preference to the much harsher "crack" Guideline, the resulting Guideline computation would *not* point to a life

sentence for Mr. Aaron.[9] If the overly-harsh nature of the "crack" Guideline as recognized by the Sentencing Commission is given effect as the Supreme Court said in *Kimbrough*, then the goal of "just punishment" would clearly be satisfied by resentencing Mr. Aaron to a significant term of years less than life.

A much more down-to-earth view of the unnecessarily long sentence that Mr. Aaron received under the Guidelines has been expressed by one of the jurors who convicted Mr. Aaron. Juror William Jordan was interviewed for a nationally-televised "Frontline" program in 1999. Although he had sat through the trial and heard all the evidence, Mr. Jordan had missed Mr. Aaron's sentencing. Mr. Jordan was shocked to learn of Mr. Aaron's life sentence. The following exchange took place during the interview:

> INTERVIEWER: What kind of sentence do you think he deserves?
>
> JORDAN: Well, I wouldn't have thought a large number of years, no. Just a- just a- probably a short sentence. Now, what a short sentence is I don't know- three to five years, maybe something like that. I don't know.
>
> INTERVIEWER: Do you know that he got life?
>
> JORDAN: Life!
>
> INTERVIEWER: Three concurrent life sentences.
>
> JORDAN: Three concurrent life sentences. With no hope of parole?
>
> INTERVIEWER: No hope of parole.

---

[9] The Base Offense Level for cocaine applicable to Mr. Aaron (USSG § 2D1.1(c)(3)) would be 34. Even assuming that both a 3-point increase for "role in the offense" and a 2-point increase for "obstruction" were warranted, Mr. Aaron's Total Offense Level would be 39. For an offender with a Criminal History Category of I (such as Mr. Aaron), the sentencing range for level 39 does *not* include a life sentence.

> JORDAN: Well, that's more than I thought it would be. But see, I had no idea. Well, I'm surprised at that, I really am, that harsh a sentence. He seemed to be a pretty promising boy. Why did they get such a high sentence, I wonder? I wish I didn't know now that they'd got life.

Ex. 9, at Tab B.

In terms of the sentencing goal of general deterrence, a cynic might ask, how much is a year of a man's life worth? Mr. Aaron received $1500 for his criminal acts. Thus, his crime has earned him slightly less than $100 for each year of his incarceration to date -- $1500 for almost 15 years incarceration, so far. Thus, for anyone who values a year of his or her life at more than $100, the fourteen-plus years that Mr. Aaron has served to date are more than adequate deterrence.

2. The Sentencing Goals Of Rehabilitation And Protection Of The Public From Further Crimes Of Mr. Aaron Would Be Fully Met By A Sentence Of Fifteen Years.

Nothing bespeaks Clarence Aaron's rehabilitation more eloquently than the stellar record he has compiled during his fourteen years of incarceration: his spotless disciplinary record, his hard work and success at his prison jobs, his continuing pursuit of education, and his active involvement with programs to benefit other inmates.

It would be easy for one of lesser character, faced with the hopeless prospect of life in prison, simply to withdraw from life. But that is not Clarence Aaron. As he tells the Court in his declaration:

> I can't change what happened, however much I wish I could re-think the decision I made back then [in 1992]. All I can tell you, through my actions and my faith, is that I have matured and changed. I look at life much differently now. . . .
>
> I have asked God for his forgiveness, and I have had to forgive myself. Now I must work for forgiveness of my family, my friends, and the community that I harmed. . . .
>
> After reading books like Purpose Driven Life, by Rick Warren, and Awaken the Giant Within, by Anthony Robbins, I have seen how short of God's purpose I have fallen, and believe I have found a purpose. I want to work with wayward boys from the ages of 16 to 26 years old. I think that those years are the most impressionable in a young man's life. With my life experiences and testimony, I believe I can be a light at the end of the tunnel for a wayward youth or young adult who has somewhat lost his way. I believe I can help them make the right choices, as I failed to do those many years ago, and my story can give them the strength to avoid the weakness to which I fell prey. . . . I believe that I can make an important contribution to my community through this work and that I can restore some of the damage done by my actions years ago. . . .
>
> Every day I wake-up I have to deal with my reality. Those years ago, I made a horribly selfish, foolish and wrong decision that I am truly sorry for. I so regret all the hurt and damage I have caused others through my transgression. One of my life goals is to be the best person I can be. I want to be the best son, uncle, friend and citizen I can be. As I sit here now and reflect on my current plight, I feel the growth, maturity and strength that my experience in prison has, in God's loving hands, brought about in me. I just pray for a second chance to be a productive citizen.

Ex. 1, ¶ 39, 40, 41, and 43.[10]

Additionally, in speaking of Mr. Aaron's rehabilitation, Pastor George McNeil states:

[10] These are Mr. Aaron's words; not those of counsel.

> As a minister, I have never met a person who is more inspiring than Clarence. Clarence's growth has been phenomenal. He has matured emotionally and morally to the point that he knows that if he wants to get anything good out of life he's got to do it through the right route. . . . Clarence now understands that regardless of the gravity of his situation, regardless of however noble his intentions might be, he can never again go the wrong way to get the right result. He now knows that getting involved in any criminal or immoral behavior is inexcusable regardless of the circumstance. I believe that Clarence's moral conversion is complete. He wants nothing to do with that life. Clarence is not a person who is just sorry that he was caught. Clarence is ashamed of himself for being involved in the conspiracy at all.

Ex. 7, ¶ 5.

Mr. Aaron comes before the Court with the support of his family, friends and members of the Mobile community, including Clarence's pastor, the head of the local Masonic Lodge, and a local business owner.[11] From their declarations, it is clear that, through all of Mr. Aaron's years in prison, he has remained connected with his family and members of his community to the extent permitted by circumstances. His family will welcome him home lovingly and will provide a network of support, both physical and emotional. He has the prospect of employment in both secular and religious capacities.[12] His Masonic brothers will welcome him back into their community, and believe that Mr. Aaron's experience

[11] *See* Ex. 4 (Declaration of Katrina Aaron); Ex. 5 (Declaration of Linda Aaron); Ex. 6 (Declaration of Clarence Martin, Jr.); Ex. 7 (Declaration of George McNeil); Ex. 8 (Declaration of Willie J. Perry, Sr.); Ex. 10 (Declaration of Jamar Wallace); and Ex. 11 (Declaration of Clarence D. Washington).

[12] *See* Ex. 10, ¶ 4 (offering Clarence a position in his auto shop as an estimate writer); Ex. 8, ¶ 3 (offering Clarence a position as a youth minister and counselor); and Ex. 7, ¶ 9 (offering Clarence a position as a youth minister and counselor).

will make the organization more effective in deterring youth from getting involved in criminal activity. Ex. 11, ¶¶ 4-5. If he were released, Mr. Aaron's dream of becoming a contributing member of society appears to have a solid foundation for success.

Conclusion

Clarence Aaron's triple life sentence reflects what one Court of Appeals has termed "a sentencing inversion." *United States v. Brigham*, 977 F.2d 317, 318 (7th Cir. 1992). In that case, the court observed that, in a drug conspiracy case:

> Bold dealers may turn on their former comrades. . . . Timorous dealers may provide information about their sources and customers. Drones of the organization -- the runners, mules, drivers and lookouts -- have nothing comparable to offer. . . . Whatever tales they have to tell, their bosses have related. . . . The more serious the defendant's crimes, the lower the sentence -- because the greater his wrongs, the more information and assistance he has to offer to a prosecutor.

977 F.2d at 317-18. The scenario that the *Brigham* court described is much like what happened to Clarence Aaron. A "bold dealer" and other senior members of the conspiracy were arrested first and had valuable information to offer the government. With "nothing comparable to offer," Clarence Aaron's sentence is much longer, in this case infinitely longer. Although the *Brigham* court noted that "meting out the harshest sentences to those least culpable is troubling, because it accords with no one's theory of appropriate punishments," 977 F.2d at 318, the court nevertheless concluded that it had no power to correct the injustice of an

inverted sentencing. In *Booker*, however, the Supreme Court indicated that this Court now does have the power to correct the injustice of the inverted sentence imposed on Mr. Aaron.

Over two centuries ago, Cesare Beccaria, the Italian political economist, opined that "there must be a proportion between crimes and punishments." Ex. 35 (Cesare Beccaria, *On Crimes and Punishments*, 46 (David Young trans. 1986) (1764)). Beccaria observed further that,

> To the degree that punishments become more cruel, men's souls become hardened . . . . In order for a penalty to achieve its objective, all that is required is that the harm of the punishment should exceed the benefit resulting from the crime. . . . Everything more than this is thus superfluous and therefore tyrannical.

Id. Here, the benefit to Clarence Aaron was $1,500. Does a life term in prison not exceed that benefit, and thus exceed the necessary punishment?

Section 3553(a) indicates that this Court should impose a sentence on Clarence Aaron that is "not greater than necessary" to achieve the basic sentencing goals. *See* 18 U.S.C. § 3553(a). The defendant Clarence Aaron respectfully submits that a life sentence greatly exceeds this standard and prays that this Court exercise its discretion to resentence him to a term of imprisonment of 15 years.

Respectfully submitted,

CLARENCE AARON

By his attorneys,

Dated: May 23, 2008

s/ A. Hugh Scott
A. Hugh Scott
Kathleen Burdette Shields
Heather L. Castillo
Michael Viano, Jr.
Choate, Hall & Stewart LLP
Two International Place
Boston, MA 02110
Tel: (617) 248-5000
Fax: (617) 248-4000
E-mail: hscott@choate.com

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CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to Assistant United States Attorney Steven E. Butler, and any other counsel of record.

Respectfully submitted,

Dated: May 23, 2008

s/ Michael Viano, Jr.
Michael Viano, Jr.
Attorney for Clarence Aaron
Choate, Hall & Stewart LLP
Two International Place
Boston, MA 02110
Tel: (617) 248-5000
Fax: (617) 248-4000
E-mail: mviano@choate.com

4333388